

### **302 KAR 10:050. Appeal procedure.**

RELATES TO: KRS 260.580

STATUTORY AUTHORITY: KRS 260.580

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation prescribes procedures for revoking or suspending egg licenses, placing licensees on probation and procedures for appeal.

Section 1. Any party aggrieved by an order issued by the department revoking or suspending his license or by an order placing him upon probation has standing to seek administrative appellate relief.

Section 2. Hearing Committee. (1) There will be a hearing committee available at all times to hear complaints by aggrieved parties and to decide whether to revoke licenses for alleged violation of the egg marketing law.

(2) The hearing committee will hear each complaint and rule on each recommendation for revocation.

(3) The hearing committee shall have authority to:

- (a) Administer oaths and affirmations;
- (b) Issue subpoenas authorized by law;
- (c) Rule upon offers of proof and receive relevant evidence;
- (d) Take or cause depositions to be taken whenever the ends of justice would be served thereby;
- (e) Regulation the course of the hearing; and
- (f) Make decisions and issue orders.

Section 3. Evidence. In a revocation proceeding, where a show cause order has been issued, the department, prior to the actual hearing will require the inspector to submit a detailed report concerning his recommendation and/or other action. This report will be presented to the hearing officer prior to the actual hearing. A copy of this report will be sent to the licensee at least ten (10) days prior to the actual hearing so that he may be apprised of all the allegations therein. The burden of proof shall be upon the department to show that an order revoking or suspending a party's license or placing a party upon probation should issue. Every party shall have the right to present his case or defense by oral or documentary evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

Section 4. Record. The transcript of a testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision. Where the decision rests upon official notice of a material fact not appearing in the evidence in the record, any party shall on timely request be afforded an opportunity to show the contrary.

Section 5. Agency Review. (1) Any party aggrieved by an order issued by the hearing committee which revokes, suspends, or places the party on probation may appeal the finding to the commissioner within thirty (30) days after issuance of the order.

(2) The commissioner will study the record as a whole and determine if the finding is supported by substantial evidence. If there is substantial evidence, then he shall dismiss the appeal and notify the appellant thereof. But if he decides that the finding is not supported by substantial evidence, then he may set the findings and order aside or he may in his discretion set the findings and order aside and remand the record to a hearing officer other than the one who made the findings and order, and order a rehearing on the matter.

Section 6. Judicial Review. Any party aggrieved by an order which has been finally reviewed by the commissioner may appeal the decision to the Franklin Circuit Court in the manner provided in Rule 72 of the Rules of Civil Procedure. (Agr: Egg:Li60; 1 Ky.R. 735; eff. 5-14-75.)